

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF VIRGINIA,
(ALEXANDRIA DIVISION)

GERBER LEGENDARY BLADES DIVISION,
FISKARS BRANDS, INC.,

Plaintiff,

V.

U.S. ABILITYONE COMMISSION,

Defendant.

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff, Gerber Legendary Blades Division, Fiskars Brands, Inc. (Gerber), brings this action to compel the U.S. AbilityOne Commission (AbilityOne) to release records withheld in violation of the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

2. AbilityOne is violating FOIA by failing to produce (or lawfully withhold) records in accordance with FOIA's statutorily prescribed time limits.

3. Gerber respectfully requests that the Court order AbilityOne to immediately produce all responsive agency records that AbilityOne has unlawfully withheld from Gerber.

PARTIES

4. Gerber, located at 14200 SW 72nd Ave., Portland, Oregon 97224, is a longstanding supplier of knives, multi-tools, and other complex problem-solving gear to customers that include the U.S. military and other federal agencies.

5. Built on the pillars of craftsmanship, innovation, and an unrelenting commitment to quality, Gerber has been one of the most trusted brands in its industry since 1939.

6. AbilityOne, located at 1401 S. Clark St., Arlington, Virginia 22202, is an independent federal agency established by the Javits-Wagner-O'Day Act (JWOD), 41 U.S.C. §§ 8501-8506.

JURISDICTION AND VENUE

7. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Venue is proper in this judicial district under 5 U.S.C. § 552(a)(4)(B).

LEGAL BACKGROUND

9. The JWOD, 41 U.S.C. §§ 8501-8506, requires federal agencies to purchase “suitable” commodities and services from qualified non-profit agencies (NPA) that employ a certain percentage of blind or severely disabled individuals. *See* 41 C.F.R. § 51-2.4(a).

10. Under the JWOD, Congress established AbilityOne, which, among other things, determines whether a commodity or service is suitable for purchase from a qualified NPA. *See* 41 U.S.C. § 8502-03.

11. If AbilityOne determines that a commodity or service is suitable for purchase from a qualified NPA, AbilityOne adds that item to its “Procurement List.” *Id.* at § 8503(a).

12. The Procurement List is the list of suitable commodities and services that the government must purchase from qualified NPAs; once AbilityOne adds a commodity to the Procurement List, businesses can no longer sell that product to the government. *See Id.* at §§ 8503(a); 8504.

13. Under AbilityOne’s regulations, a commodity is “suitable” for addition to the Procurement List if it satisfies the following four conditions:

- (1) Employment potential. The Proposed addition must demonstrate a potential to generate employment for persons who are blind or have other severe disabilities.

(2) NPA qualifications. The NPA (or agencies) proposing to furnish the item must qualify as a NPA serving persons who are blind or have other severe disabilities

(3) Capability. The NPA (or agencies) desiring to furnish a commodity or service under the JWOD program must satisfy the Committee as to the extent of the labor operations to be performed and that it will have the capability to meet Government quality standards and delivery schedules by the time it assumes responsibility for supplying the Government.

(4) Level of adverse impact on current contractor for the commodity or service.

See 41 C.F.R. § 51-2.4.

FACTUAL BACKGROUND

14. On July 6, 2018, AbilityOne published a Federal Register notice that proposed adding seven Gerber weapon cleaning tool kits to the Procurement List. *See* Procurement List; Proposed Additions and Deletions, 83 Fed. Reg. 31,529 (July 6, 2018).

15. AbilityOne did not communicate with Gerber prior to publishing the July 6, 2018, Federal Register notice, and Gerber did not learn of the proposal until late 2018.

16. On October 30, 2018, seeking to understand AbilityOne's authority for adding its products to the Procurement List, Gerber submitted a FOIA request for the following records:

- a. All records the [AbilityOne] Commission has developed, considered, or relied upon with respect to the listing or potential listing on the Commission's Procurement List of products with the following National Stock Numbers (NSN): (a) NSN 5180-01-516-3218; (b) NSN 5180-01-516-3219; (c) NSN 5180-01-516-3220; (d) NSN 5180-01-516-3222; (e) NSN 5180-01-516-3224; (f) NSN 5180-01-516-3225; and (g) NSN 5180-015-16-3227.
- b. To the extent not covered by request (1), all records related to the Commission's consideration of the suitability of the NSNs identified in request (1) for addition to the Procurement List under the criteria set forth at 41 C.F.R. § 51-2.4.
- c. All records related to any other Fiskars Brands, Inc. or Gerber products that the Commission is considering for addition to the Procurement List.

See Ex. 1, Oct. 30, 2018, FOIA Request, at A1.¹

17. Gerber agreed to pay at least \$500 for compliance with the FOIA request. *Id.* at A2.

18. On October 31, 2018, AbilityOne acknowledged receipt of Gerber's FOIA request, but provided no information about how and when AbilityOne would comply with the FOIA request. *See* Ex. 2, Oct. 31, 2018, FOIA Acknowledgement Email, at A3.

19. The October 31, 2018, acknowledgment of receipt is the only direct communication Gerber has received from AbilityOne about the FOIA request.

20. On February 26, 2019, Gerber sent an email to an AbilityOne official seeking information on the status of the FOIA request. *See* Ex. 3, Feb. 26, 2019, Email Chain, at A4.

21. As relevant here, the AbilityOne official responded as follows: "I do not know what the plan is to provide you a response however, I have copied our new FOIA coordinator . . . to assist you." *Id.*

22. The new FOIA coordinator has not contacted Gerber.

23. On June 28, 2019, Gerber sent the FOIA coordinator a letter again seeking a response to the October 30, 2018, FOIA request. *See* Ex. 4, June 28, 2019, Gerber Letter, at A8-9.

24. In its letter, Gerber explained that it intended to enforce its rights under FOIA if AbilityOne did not fully respond to the FOIA request by July 12, 2019. *Id.*

25. On July 11, 2019, Gerber emailed the FOIA coordinator asking for an update. *See* Ex. 5, July 11, 2019, Gerber Email, at A12.

26. The FOIA coordinator did not respond to Gerber's June 28 letter or its July 11 email.

27. Thus, despite the fact that almost nine months have passed since Gerber submitted its FOIA request, AbilityOne has not informed Gerber (i) whether AbilityOne has responsive documents,

¹ "A__" refers to a page of the appendix to this complaint.

(ii) when AbilityOne will release responsive documents, or (iii) AbilityOne's basis for withholding any responsive documents.

COUNT I
(Failure to Respond Within FOIA's 20-Day Statutory Deadline)

28. Gerber realleges and incorporates by reference all of the allegations in paragraphs 1-27 as if fully set forth herein.

29. Upon receiving a FOIA request, an agency must determine within 20 business days "whether to comply with such request" and must "immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination." 5 U.S.C. § 552(a)(6)(A)(i).

30. AbilityOne violated section 552(a)(6)(A)(i) of FOIA by failing to determine within 20 business days whether to disclose responsive documents and failing to immediately notify Gerber about the rationale for its determination.

COUNT II
(Failure to Make Responsive Non-Exempt Records Promptly Available)

31. Gerber realleges and incorporates by reference all of the allegations in paragraphs 1-30 as if fully set forth herein.

32. FOIA requires that after receiving a request for records that "reasonably describes" the records sought and complies with "published rules ... and procedures to be followed," AbilityOne "shall make the records promptly available to any person." *See* 5 U.S.C. § 552(a)(3)(A).

33. Gerber's FOIA request reasonably described the records sought and complied with AbilityOne's published rules and procedures.

34. Therefore, AbilityOne's failure to promptly make available non-exempt records responsive to Gerber's FOIA request violates section 552(a)(3)(A) of FOIA.

PRAYER FOR RELIEF

WHEREFORE, Gerber respectfully requests that this Court award the following relief:

- (A) Declare that AbilityOne unlawfully failed to respond to Gerber's October 30, 2018, FOIA request;
- (B) Order AbilityOne to (i) determine whether it has documents responsive to Gerber's request and (ii) produce all responsive documents at no cost to Gerber within 10 days of such order;
- (C) Order AbilityOne to produce a *Vaughn* index of any responsive records withheld under a claim of exemption;
- (D) Award Gerber its litigation costs, including reasonable attorney fees; and
- (E) Grant Gerber such further and additional relief as the Court deems just and proper.

Respectfully submitted

s/ Timothy D. Belevetz

TIMOTHY D. BELEVETZ (VA Bar No. 36110)

Ice Miller

20 F St. NW, Suite 850

Washington, DC 20001

Telephone: (202) 572-1605

Facsimile: (202) 807-4016

Email: timothy.belevetz@icemiller.com

s/ Joshua D. Schnell

JOSHUA D. SCHNELL* (VA Bar No. 78165)

Ice Miller LLP

20 F St. NW, Suite 850

Washington, DC 20001

Telephone: (202) 572-1603

Facsimile: (202) 572-1604

Email: joshua.schnell@icemiller.com

*Application for admission forthcoming

July 18, 2019

Counsel for Plaintiff

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Exhibit 1



20 F Street NW | Suite 850 | Washington, DC 20001
Chicago Columbus DuPage County, Ill.
Indianapolis New York Philadelphia Washington, D.C.

October 30, 2018

WRITER'S DIRECT NUMBER: (202) 572-1603
DIRECT FAX: (202) 572-1604
EMAIL: Joshua.Schnell@icemiller.com

FOIA REQUEST

Via Email

Tina Ballard
Executive Director
U.S. AbilityOne Commission
Jefferson Plaza 2, Suite 10800
1421 Jefferson Davis Highway
Arlington, VA 22202-3259
tballard@abilityone.gov

RE: FOIA Request for Records Related to Fiskars Brands, Inc. Products

Dear Ms. Ballard:

My firm represents Fiskars Brands, Inc., and I write to request records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the U.S. AbilityOne Commission regulations at 41 C.F.R. Part 51-8.

I. Description of Records Sought

Please produce records of the following types in the AbilityOne Commission's possession, custody, or control:

- (1) All records the Commission has developed, considered, or relied upon with respect to the listing or potential listing on the Commission's Procurement List of products with the following National Stock Numbers (NSN): (a) NSN 5180-01-516-3218; (b) NSN 5180-01-516-3219; (c) NSN 5180-01-516-3220; (d) NSN 5180-01-516-3222; (e) NSN 5180-01-516-3224; (f) NSN 5180-01-516-3225; and (g) NSN 5180-015-16-3227.
- (2) To the extent not covered by request (1), all records related to the Commission's consideration of the suitability of the NSNs identified in request (1) for addition to the Procurement List under the criteria set forth at 41 C.F.R. § 51-2.4.
- (3) All records related to any other Fiskars Brands, Inc. or Gerber products that the Commission is considering for addition to the Procurement List.

October 30, 2018
Page 2

II. Willingness to Pay Fees

Fiskars Brands is willing to pay fees for this request up to \$500. Please contact me as soon as possible if you estimate that the Commission's fees will exceed this limit.

III. FOIA Exemptions

If the Commission invokes any FOIA exemptions in response to this request, please include sufficient information for us to assess the basis for each asserted exemption. For example, if the Commission withholds a record (or portion of a record) under FOIA exemption 4, please identify why the Commission believes disclosure of the record is likely to cause substantial competitive harm. Similarly, if the Commission withholds any administrative record documents (or portions of a document) under FOIA exemption 5, please identify the Commission's legal authority for asserting privilege over a document that is part of an administrative record. This information will help us decide whether to appeal an adverse determination.

IV. Conclusion

Thank you for your attention to this FOIA request. Please send me responsive records on a rolling basis as the Commission's search for – or deliberations concerning – certain records should not delay the production of other records that are ready for production. If possible, please email the requested records to me at joshua.schnell@icemiller.com. If email is not possible, you may mail the records to me at the following address:

Joshua Schnell
Ice Miller LLP
20 F St. N.W.
Suite 850
Washington, D.C. 20001

Please do not hesitate to call or email me to clarify the request or otherwise expedite and simplify your efforts to comply.

Best regards,

ICE MILLER LLP



Joshua Schnell

Exhibit 2

From: Vanedra D. Smith - Contractor <vsmith@abilityone.gov>
Sent: Wednesday, October 31, 2018 11:30 AM
To: Schnell, Joshua
Subject: [EXT] RE: FOI-2019-1001 Friskars

Reference: *FOIA Request for Records Related to Fiskars Brands, Inc. Products*

Dear Mr. Schnell ,

I am writing to acknowledge receipt of your request for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your inquiry is addressed to the U.S. AbilityOne Commission – the operational name of the Committee for Purchase From People Who Are Blind or Severely Disabled.

Please include the request number FOI-2019-1001 in communication that relates to this action. If after further review of your request, we determine additional clarification is necessary, we will contact you.

Thank you,
Vanedra Smith
U.S. AbilityOne Commission
FOIA Administrator
703 603-2153

Exhibit 3

From: Michael Jurkowski [MJurkowski@AbilityOne.gov] <mjurkowski@AbilityOne.gov>
Sent: Tuesday, February 26, 2019 1:39 PM
To: Schnell, Joshua
Cc: Timi Kenealy [TKenealy@Abilityone.gov]; Amy Jensen [AJensen@AbilityOne.gov]; Karen Guile
Subject: RE: [EXT] RE: Proposed Listing of Gerber Weapon Kits

****EXTERNAL EMAIL****

Joshua,

Thank you for your email.

I do not know what the plan is to provide you a response however, I have copied our new FOIA coordinator, Karen Guile to assist you.

Mike

From: Joshua.Schnell@icemiller.com [mailto:Joshua.Schnell@icemiller.com]
Sent: Tuesday, February 26, 2019 1:35 PM
To: Michael Jurkowski [MJurkowski@AbilityOne.gov] <mjurkowski@AbilityOne.gov>
Cc: Timi Kenealy [TKenealy@Abilityone.gov] <tkenealy@abilityone.gov>; Amy Jensen [AJensen@AbilityOne.gov] <ajensen@AbilityOne.gov>
Subject: RE: [EXT] RE: Proposed Listing of Gerber Weapon Kits

Mike,

Just following up on my below email. Fiskars would very much appreciate an answer regarding whether the AbilityOne Commission is still considering adding the seven weapon kits to the Procurement List. In addition, we are still waiting on a response to our attached FOIA request. Given your below email, will the Commission be sending us a "no responsive records" response in the immediate future? Thanks for any information you can share.

Best,
Josh

IceMiller
LEGAL COUNSEL
[Joshua Schnell](#)
Partner
Joshua.Schnell@icemiller.com
p 202-572-1603 f 202-572-1604

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Washington, DC 20001

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From: Schnell, Joshua
Sent: Friday, February 8, 2019 12:41 PM
To: Michael Jurkowski [MJurkowski@AbilityOne.gov]
Cc: Timi Kenealy [TKenealy@Abilityone.gov]; Amy Jensen [AJensen@AbilityOne.gov]
Subject: RE: [EXT] RE: Proposed Listing of Gerber Weapon Kits

Mike,

I'm not sure I understand where things stand. In the attached July 2018 Federal Register notice, the Commission proposed adding seven Gerber weapon kits to the Procurement List. If the Commission hasn't received a proposal to add these weapon kits, does that mean the Commission is no longer considering them for addition to the Procurement List? If so, will the Commission announce its decision in the Federal Register?

Best,
Josh

IceMiller
LEGAL COUNSEL
[Joshua Schnell](#)
Partner

Joshua.Schnell@icemiller.com
p 202-572-1603 f 202-572-1604

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Washington, DC 20001

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From: Michael Jurkowski [MJurkowski@AbilityOne.gov] [<mailto:mjurkowski@AbilityOne.gov>]
Sent: Friday, February 08, 2019 11:28 AM
To: Schnell, Joshua
Cc: Timi Kenealy [TKenealy@Abilityone.gov]; Amy Jensen [AJensen@AbilityOne.gov]
Subject: RE: [EXT] RE: Proposed Listing of Gerber Weapon Kits

****EXTERNAL EMAIL****

Josh,

No status to provide as we have not received a proposal to add the kit to the AbilityOne Procurement List, nor any communication regarding the project.

Enjoy your weekend,
Mike

From: Joshua.Schnell@icemiller.com [<mailto:Joshua.Schnell@icemiller.com>]
Sent: Friday, February 8, 2019 8:54 AM
To: Michael Jurkowski [MJurkowski@AbilityOne.gov] <mjurkowski@AbilityOne.gov>
Subject: RE: [EXT] RE: Proposed Listing of Gerber Weapon Kits

Mike,
Can you give me an update on the status of the proposed listing of the Gerber Weapon Kits? I just want to understand where things stand at the Commission. I am available to talk anytime today except 12-2 p.m. Monday is also wide open for me.
Thanks,
Josh

IceMiller
LEGAL COUNSEL

[Joshua Schnell](mailto:Joshua.Schnell@icemiller.com)
Partner
Joshua.Schnell@icemiller.com
p 202-572-1603 f 202-572-1604

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Washington, DC 20001

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icemiller.com

From: Michael Jurkowski [MJurkowski@AbilityOne.gov] [<mailto:mjurkowski@AbilityOne.gov>]
Sent: Saturday, November 10, 2018 12:07 PM
To: Schnell, Joshua
Cc: Amy Jensen [AJensen@AbilityOne.gov]
Subject: [EXT] RE: Proposed Listing of Gerber Weapon Kits

Joshua,

Apologizes for the delayed response.

Yes, the request was received the day submitted.

Mike Jurkowski

Business Management Specialist
Commercial Distribution Coordinator (Acting)
U.S. AbilityOne Commission
Business Operations
p: 703-603-2117
email: mjurkowski@abilityone.gov - Web: www.abilityone.gov



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From: Joshua.Schnell@icemiller.com [<mailto:Joshua.Schnell@icemiller.com>]
Sent: Thursday, November 8, 2018 10:54 AM
To: Michael Jurkowski [MJurkowski@AbilityOne.gov] <mjurkowski@AbilityOne.gov>
Subject: FW: Proposed Listing of Gerber Weapon Kits

Mike,
I haven't heard anything from the Commission about the below email, so I just wanted to confirm that you and Amy received the email and attachments. Please let me know when you have a minute.
Thanks,
Josh

IceMiller
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From: Schnell, Joshua
Sent: Tuesday, October 30, 2018 6:57 PM
To: 'Amy Jensen' [AJensen@AbilityOne.gov]; Michael Jurkowski [MJurkowski@AbilityOne.gov]
Cc: Roberts, Katie; 'Liebling, Jeff'; Woodward, Aaron
Subject: Proposed Listing of Gerber Weapon Kits

Dear Ms. Jensen,
My firm represents Gerber Legendary Blades Division, Fiskars Brands, Inc. (Gerber) with respect to the proposed addition of seven Gerber products to the AbilityOne Commission's Procurement List. Please find attached a letter and related FOIA request stating Fiskars' objections to the proposed listing of its products. Thank you for your attention to this matter, and we look forward to discussing further at the Commission's earliest convenience.
Best,
Josh

IceMiller
LEGAL COUNSEL
[Joshua Schnell](#)
Partner
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Thank you.
ICE MILLER LLP

Exhibit 4



20 F Street NW | Suite 850 | Washington, DC 20001
Chicago Columbus DuPage County, Ill.
Indianapolis New York Philadelphia Washington, D.C.

June 28, 2019

WRITER'S DIRECT NUMBER: (202) 572-1603
DIRECT FAX: (202) 572-1604
EMAIL: Joshua.Schnell@icemiller.com

Sent Via Email

Karen Guile
FOIA Administrator, AbilityOne Commission
U.S. AbilityOne Commission
Jefferson Plaza 2, Suite 10800
1421 Jefferson Davis Highway
Arlington, VA 22202-3259
kguile@abilityone.gov

RE: FOIA Request 2019-1001

Dear Ms. Guile:

My firm represents Fiskars Brands, Inc., and I write regarding the attached October 30, 2018, Freedom of Information Act (FOIA) request that I submitted on Fiskars' behalf. Under FOIA, the AbilityOne Commission was required to provide us with records responsive to our request within approximately 20 business days. Nevertheless, we have been waiting eight months for a response from the AbilityOne Commission. Accordingly, please be advised that we intend to enforce our rights under FOIA if the AbilityOne Commission does not provide us with records responsive to our request by July 12, 2019.

FOIA imposes strict deadlines on the AbilityOne Commission for responding to records requests. Specifically, within 20 business days of receiving a FOIA request, the Commission must (1) determine whether to disclose responsive records and (2) notify the requester of the rationale for its determination. *See* 5 U.S.C. § 552(a)(6)(A)(i). This determination must indicate the scope of the documents that the Commission will produce and any applicable exemptions. *See Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n.*, 711 F.3d 180, 184 (D.C. Cir. 2013). The Commission may extend the 20-day statutory deadline in "unusual circumstances," but only for a maximum of 10 business days. *See* 5 U.S.C. § 552(a)(6)(B)(i)-(iii). When relying upon such an extension, the Commission must "provide an estimated date on which the agency will complete action on the request." 5 U.S.C. § 552(a)(7)(B)(ii).

With regards to document production, FOIA requires the AbilityOne Commission to make records "promptly available" after the 20-day determination. 5 U.S.C. § 552(a)(3)(A). Depending on the circumstances, promptly available "typically would mean within days or a few weeks of a 'determination,' not months or years." *Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188 (citing 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i)).

June 28, 2019

Page 2

Here, the AbilityOne Commission has failed to meet FOIA's statutory deadlines for eight months. Fiskars cannot wait any longer to receive the records it is entitled to under FOIA. Accordingly, if the Commission does not provide us with these records by July 12, 2019, we intend to enforce our rights in Federal court. Given the eight-month delay, we are confident that the court will, among other things, order the AbilityOne Commission to produce the responsive records and pay Fiskars' legal fees.

I sincerely hope that we can avoid the need for litigation. Please contact me at your earliest convenience if you would like to discuss further.

Best regards,

ICE MILLER LLP

A handwritten signature in blue ink, appearing to read "Joshua Schnell", with a long horizontal flourish extending to the right.

Joshua Schnell



20 F Street NW | Suite 850 | Washington, DC 20001
Chicago Columbus DuPage County, Ill.
Indianapolis New York Philadelphia Washington, D.C.

October 30, 2018

WRITER'S DIRECT NUMBER: (202) 572-1603
DIRECT FAX: (202) 572-1604
EMAIL: Joshua.Schnell@icemiller.com

FOIA REQUEST

Via Email

Tina Ballard
Executive Director
U.S. AbilityOne Commission
Jefferson Plaza 2, Suite 10800
1421 Jefferson Davis Highway
Arlington, VA 22202-3259
tballard@abilityone.gov

RE: FOIA Request for Records Related to Fiskars Brands, Inc. Products

Dear Ms. Ballard:

My firm represents Fiskars Brands, Inc., and I write to request records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the U.S. AbilityOne Commission regulations at 41 C.F.R. Part 51-8.

I. Description of Records Sought

Please produce records of the following types in the AbilityOne Commission's possession, custody, or control:

- (1) All records the Commission has developed, considered, or relied upon with respect to the listing or potential listing on the Commission's Procurement List of products with the following National Stock Numbers (NSN): (a) NSN 5180-01-516-3218; (b) NSN 5180-01-516-3219; (c) NSN 5180-01-516-3220; (d) NSN 5180-01-516-3222; (e) NSN 5180-01-516-3224; (f) NSN 5180-01-516-3225; and (g) NSN 5180-015-16-3227.
- (2) To the extent not covered by request (1), all records related to the Commission's consideration of the suitability of the NSNs identified in request (1) for addition to the Procurement List under the criteria set forth at 41 C.F.R. § 51-2.4.
- (3) All records related to any other Fiskars Brands, Inc. or Gerber products that the Commission is considering for addition to the Procurement List.

October 30, 2018
Page 2

II. Willingness to Pay Fees

Fiskars Brands is willing to pay fees for this request up to \$500. Please contact me as soon as possible if you estimate that the Commission's fees will exceed this limit.

III. FOIA Exemptions

If the Commission invokes any FOIA exemptions in response to this request, please include sufficient information for us to assess the basis for each asserted exemption. For example, if the Commission withholds a record (or portion of a record) under FOIA exemption 4, please identify why the Commission believes disclosure of the record is likely to cause substantial competitive harm. Similarly, if the Commission withholds any administrative record documents (or portions of a document) under FOIA exemption 5, please identify the Commission's legal authority for asserting privilege over a document that is part of an administrative record. This information will help us decide whether to appeal an adverse determination.

IV. Conclusion

Thank you for your attention to this FOIA request. Please send me responsive records on a rolling basis as the Commission's search for – or deliberations concerning – certain records should not delay the production of other records that are ready for production. If possible, please email the requested records to me at joshua.schnell@icemiller.com. If email is not possible, you may mail the records to me at the following address:

Joshua Schnell
Ice Miller LLP
20 F St. N.W.
Suite 850
Washington, D.C. 20001

Please do not hesitate to call or email me to clarify the request or otherwise expedite and simplify your efforts to comply.

Best regards,

ICE MILLER LLP



Joshua Schnell

Exhibit 5

From: Schnell, Joshua
Sent: Thursday, July 11, 2019 7:51 PM
To: KGuile@abilityone.gov
Subject: RE: FOIA Request 2019-1001

Ms. Guile:
I would very much appreciate an update on the status of our FOIA request and the Commission’s response to our June 28, 2019, letter.
Best,
Josh



[Joshua Schnell](#)
Partner
Joshua.Schnell@icemiller.com
p 202-572-1603 f 202-572-1604

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icemiller.com

From: Schnell, Joshua
Sent: Friday, June 28, 2019 4:42 PM
To: KGuile@abilityone.gov
Subject: FOIA Request 2019-1001

Ms. Guile:
Please find attached a letter regarding FOIA request 2019-1001, which has been pending since October 30, 2018. Thanks for your attention to this matter, and please let me know if you would like to discuss.
Best,
Josh



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